IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1208 of 1983

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANDHYABEN NAVINCHANDRA & 2 - Appellant(s)
Versus
DODIYA RUPSANG NANBHAI & 3 - Defendant(s)

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Appearance :
MR GAURANG H BHATT for Appellant Nos.1 to 3.
MR JD AJMERA FOR THE RESPONDENT NOS.1 & 2.
MR SUNIL B PARIKH FOR THE RESPONDENT NO.3,
NONE FOR THE RESPONDENT NO.4 THOUGH SERVED,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 26/04/2007

ORAL JUDGMENT

1. Mr.Gaurang H.Bhatt, learned counsel for the appellants, Mr.J.D. Ajmera, learned counsel for the respondent Nos.1 and 2 and Mr.Sunil B. Parikh, learned counsel for the respondent No.3. None for the respondent No.4 though served.

2. By this appeal under sec.110-D of the Motor Vehicles Act, 1939, the appellant are claiming that this Court should interfere in the matter and direct that the Insurance Company is answerable to the claim awarded in favour of the present appellants.

3. Short facts necessary for disposal of the present matter are that a vehicle bearing No.GTD-3213 belonged to one Rupsang Nanbhai Dodiya on the fateful day i.e. on 15/5/1979, was driven by Mori Mobising Ajubhai, respondent No.3, according to the allegations made by the original claimants, is the insurance Company with whom the said vehicle was insured.

4. The appellants - claimants had filed the claim petition for award of a sum of Rs.70,000=00 on the ground that because of rash and negligent driving of the driver of the offending vehicle, the son of the original claimant No.1 (respondent No.4), husband of the original claimant No.2 (appellant No.2) and father of original claimant Nos.3 and 4 (appellant Nos.2 and 3) died.

5. The Insurance Company after notice filed its written statement and submitted that the vehicle was insured with

them for the period between 20/4/1978 and 19/4/1979 (Exh.88) and the policy came to be renewed for the period between 16/5/1979 and 15/5/1980 (Exh.89).They submitted that on 15/5/1979, the vehicle was not insured with them, therefore, the petition against them was misconceived.

6. The owner of the truck, however, submitted that he had paid premium amount on 16/4/1979 to the agent of the Insurance Company and as renewal was to take place immediately on the lapse of first policy and further that grace period for three months was given to the owner of the vehicle and that no claim bonus was also awarded in favour of the owner of the vehicle, the Insurance Company could not be exonerated.

7. Present appellants simply submitted that present appellants – applicants during the course of trial submitted that the vehicle was insured with the respondent No.3, and, therefore, the Insurance Company was answerable to the claim made by the appellants – claimants. The owner of the vehicle stepped in the witness box and submitted that he had paid the amount of premium to the agent Mr.Jayantilal Dipchand Kothari on 16/4/1979, therefore, policy would continue to be in force. The Insurance Company apart from examining their Branch Manager, also examined said

Jayantilal Dipchand Kothari, who stated on oath that risk was earlier covered for the period between 20/4/1978 and 19/4/1979 and the new policy came in effect from 16/5/1979 and was to remain in force upto 15/5/1980. He was categorical and candid in his submission that for the period between 20/4/1979 and 15/5/1979, the vehicle was not insured with the Insurance Company. The learned tribunal, after giving its due consideration to the evidence even while allowing the claim in part, observed that the Insurance Company could not be held liable. The appellants - claimants being aggrieved by the said order, are now before this Court.

8. Mr.Bhatt, learned counsel for the appellants, after taking me through the evidence and findings recorded by the learned tribunal submitted that if no claim bonus was allowed in favour of owner of the vehicle and the policy could be renewed within a period of three months and was to relate back to the date when the first policy expired, the court must hold that on payment of premium any time within a period of three months, the vehicle would stand insured from 20/4/1979.

9. Undisputedly, on 15/5/1979, the vehicle was running without any insurance policy. The only question raised

before the tribunal was that whether Rupsang Nanbhai Dodiya paid premium on 16/4/1979 or subsequent thereto. The person who received the premium has been examined by the Insurance Company and he has categorically stated that he did not receive any amount of premium from the owner of the vehicle on 16/4/1979 and the policy was to remain in force w.e.f. 16/5/1979 for a period of one year. Himmatlal Shantilal, Branch Manager, who had also been examined by the Insurance Company has also clearly stated that the amount of premium was received in the office on 16/5/1979 after office hours. Contrary to this, there is no other evidence on the record except self-serving statement of owner of the vehicle, Rupsang Nanbhai Dodiya.

10. Mr.Sunil Parikh, learned counsel for the Insurance Company, however, submits that grant of no-claim bonus is incentive in favour of the owner of the vehicle and the grace period of three month would only be applicable if during the period of three months, the vehicle does not meet with any accident.

11. So far as the question of grace period is concerned, non-payment of premium right in time would not extend term of the policy and cannot cover the risk, but would only

provide solace to the owner of the vehicle that within extended period if no accident occurs, he may get the policy renewed and may claim some bonus etc.

12. After going through the records, I am unable to hold that the Motor Accident Claims Tribunal (Auxi), Surendranagar was unjustified in placing reliance upon statement of Himmatlal Shantilal Shah and Jayantilal Kothari while passing the impugned Judgment and Award.

13. Taking into consideration the totality of the circumstances, I am unable to hold that the tribunal was unjustified in exonerating the Insurance Company.

14. The appeal deserves to and is accordingly dismissed. No costs.

(R.S. GARG, J.)

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